

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 98-107**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

a. It is assumed that the rule also serves as an interpretation of s. 448.02 (8), Stats., and is in compliance with s. 448.40 (2) (f), Stats., both as affected by 1997 Wisconsin Act 311. [See SECTIONS 5 and 13 of Act 311.] The rule should so indicate.

b. The definitions of “first occurrence” and “minor violation,” combined with the required findings of s. RL 8.03 represent a narrow reading of s. 440.205, Stats. For example, for an occurrence of a minor violation to be considered a second or subsequent violation does not even require that a previous administrative warning have been issued; rather, merely a previous charge in a formal complaint or allegation in an informal complaint is sufficient. Further, a first occurrence of a minor violation refers to any type of previous misconduct, not the particular type of misconduct currently at issue. Thus, a prior allegation of misconduct by informal complaint, for example, would constitute a prior occurrence, regardless of the outcome of the allegation or of the type of misconduct, no matter how unrelated to the current allegation. (In the latter regard, note that the form in Appendix I informs the credential holder that any subsequent *similar* violation may result in disciplinary action. The use of “similar” in the form is inconsistent with the rule.) While the statute can be read this narrowly, the department may wish to review the rule to determine if it meets the department’s and Legislature’s intent.

#### **2. Form, Style and Placement in Administrative Code**

a. The department’s analysis fails to summarize the substance of the rule; it merely abstractly describes what the rule is intended to accomplish.

b. It appears that in the introductory clause of s. RL 8.02 (5), “any of the following” should precede the colon.

c. In the introductory clause of s. RL 8.02 (6), “all of the following” should precede the colon.

d. In s. RL 8.02 (7), “may” should be substituted for “could.”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. It appears that s. RL 8.02 (6) (e) is in need of clarification: how and by whom was the credential holder previously warned about the same or similar conduct? If the paragraph refers to a previous administrative warning, that does not appear possible, given the definition of “first occurrence.” As drafted, the rule does not appear to permit more than one administrative warning.

b. In s. RL 8.03 (3), “of a statute or rule” may be too limiting. Compare the definition of “misconduct” in s. RL 8.02 (7), which refers to violation of a statute or rule or “other conduct for which discipline may be imposed.”

c. In s. RL 8.06 (5), the word “their” should be replaced by the word “the.”